

A N  
ANSWER to a late PAMPHLET,  
INTITULED,  
The Judgment and Doctrine of the Clergy  
OF THE  
CHURCH of ENGLAND,  
Concerning one Special Branch of the  
KING'S PREROGATIVE;  
VIZ.

In dispensing With the Penal-Laws.

SHEWING

That this is not asserted by

The Most Reverend Fathers in God, the Lords Arch-Bishops, *Bancroft, Laud and Usher.*

The Right Reverend Father in God, the Lord Bishop *Sanderfon.*

The Reverend Doctors, *Dr. Heylin, Dr. Barrow, Dr. Sherlock*  
Master of the *Temple*, *Dr. Hicks, Dr. Nalson, Dr. Puller,*  
So far as appears from their words cited in THIS  
PAMPHLET.

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In a LETTER to a Friend.

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L O N D O N,

Printed for *Wic. Chiswell*, at the *Rose and Crown* in  
*St. Paul's Church-yard.* MDCLXXXVII.

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# Imprimatur,

*May 13.*  
1687.

*GUIL. NEEDHAM.*

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I

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*An Answer to a late Pamphlet, &c.*

S I R,

I Have received the Book you sent me, Intituled, [*The Judgment and Doctrine of the Clergy of the Church of England, concerning one special branch of the King's Prerogative, viz. Dispensing with the Penal Laws.*] Had I not now learnt to wonder at nothing, it would a little have surprized me; but now I shall only tell you that I have read it, and do not like it: And reserving one little reason for by and by, viz. That it is not true: I shall at present give you some other reasons of my dislike, to prevent mistakes.

And first negatively, Not because it is for the King's dispensing Power; For I never envy my King any Prerogative that belongs to his Crown: And tho, it may be, this Branch of the Prerogative was not so well understood in former days, yet it is certainly now the right of the Crown, as much as the Opinion of the Judges can make it so; and I never dispute against such an Authority: And I think it is a disparagement to the judgment of the Reverend Judges to call in Clergy-men to help them out; when he himself tells us, p. 34 *Unto the Judges the people are bound lastly and finally to submit themselves for matter of Law.* Why then does he make any further dispute about the matter? As if he distrusted the Judgment of the Judges, or thought that people would rather believe Divines than Judges in matter of Law; which would be a great scandal to that Reverend and Learned Bench. And therefore, I confess, I am very much offended with that priority he gives to the Judgment of Churchmen in this point, before the Judgment of the Judges. He says, *We could not resolve our selves in this great point (of the Supreme Power inherent in, and inseparably annexed to the Crown, to dispense with Penal Laws) but by these two ways.*

A

1. To



1. *To see, how far the Judgment of our Church-men, appearing in their Doctrines (which are for our edification) doth warrant this Prerogative to be in the King.*

2. *To see how far the Judges Resolutions (in declaring their sense of the Law of the Land in this doubtful question) do agree in such their Judgments and Doctrines.*

Fie for shame! First, make the Clergy Judges of Law, and Preach *edifyingly* about the Prerogative, and then set them before the Judges themselves, as a Rule and Pattern for them to follow; and then, as it naturally follows, judg over the Judges judgment by its agreement with the judgment of *Divines*, about Law and Prerogative. If the Writer of this Letter was a *Divine*, it argues a good Opinion of his own Profession; but if he were a Lawyer, or but a Justice of Peace, I know what he deserves.

Secondly, This brings me to the positive Reasons of my dislike of this way, and they are comprehended in two: 1. That I do not think fit to lay such stress upon the Judgment of *Church-men* in matters of Law; and such, sure this unlimited dispensing Power is, a meer point of Law; and that such an abstruse point too, as not all Lawyers, nay not all *Judges* have formerly been agreed about. Now, what does a *Churchman's* Judgment signify in matters of Law? No man's Opinion is of any value, but in such things wherein he is skilled; now a Churchman does not signify one, who is skilled in Law, but in Divinity: And tho a Church-man should be a good Lawyer; if he gives his Opinion in any point of Law, his Opinion is not valuable, as the Opinion of a Church-man, but of a Lawyer; for suppose a Church-man were skilled in Physick too, would you value his Judgment in Physick ever the more, because he is a Church-man? Or think your self more safe in his hands, than in a professed Physicians? There are Interlopers indeed in all Professions, but that any man's Judgment should be valued, because being of one Profession himself, he gives judgment in another, is a Mystery to me. And therefore this Writer should first have proved all those great Divines, Arch-bishops, Bishops, Deans, Doctors



Doctors, with whose names he hath so pompously filled his Title Page, and to whose judgment he appeals about the King's Prerogative, to have been great *Lawyers*, as well as great *Divines*, or else the Cause is *Coram non iudice*; and yet he makes no offer at this, unless by the Title he gives Dr. *Sherlock*, of *Master of the Temple*, he would intimate his great skill in *Law* too; but this will not do; for his Book of Non-resistance was written before he liv'd within the infection of the Law-air. So that it seems a very great injury to the Cause to appeal to such Judges as have no skill in the matter: For what credit can the Opinion of Divines do it, when it is not a point of Divinity, but of Law that is in question? For it is generally seen, that those are very apt to mistake, who guess at things out of their Ken; and people are apt to suspect that such contemplative men, who keep their Studies, and seldom look abroad into the World, may form fine Romantick Idea's of Government, which will not suit the publick Constitutions of Kingdoms and Nations.

Secondly, I think it is a very dangerous thing to put the Question upon such an issue as this: The design of it, I suppose, is to recommend it to the Layety of the Church of *England* by such venerable Names; but he should have considered, that the Layety of the Church of *England* are not so Priest-ridden, as they are at *Rome* and *Geneva*; they have not an implicate Faith in their spiritual Guides, and their Guides do not desire they should; and therefore it is not their Names but their Arguments must prevail; but if people are taught to rely on the opinion of their Ministers in such Prerogative Disputes, the *Popish Priests* and *Phanatick Ministers* are great Politicians too; but if they may be Judges, Sovereign Princes will get nothing by it. The Church of *England* indeed has always been addicted to the Service of the Crown, but there are other Maxims of Government among other men: *Bellarmin* and *Suarez*, and Mr. *Baxter's* Commonwealth, and the Dissenters Sayings, not to take notice now of *Julian* the Apostate, are not very favourable to the Prerogatives of Princes; and I fear people are more inclinable to follow such Guides.

Guides as these, and therefore I should have thought it more advisable to have taught people more to rely on the Opinions of *Judges* than of *Divines*, in matters of Prerogative and Law ; because I fear that the honest *Prerogative Divines* will be greatly out-nubred by the *Popish* and *Phanatick Common-wealths-men* ; and whether this will prove for the service of the King, should have been considered.

2. My second Reason, why I dislike this way is, That I fear instead of doing service, it will do great disservice to the *King*, by weakning the Authority of those many excellent discourses, which have been written about Non-resistance, and which did great service, not only to former Kings, but even to our *present Sovereign* in the late evil and critical times. It will not easily be forgot how many hard Censures those honest *Divines* underwent, who durst both from the Pulpit and the Press oppose that factious humour which was then so rampant, and presaged those wicked Conspiracies, which were afterwards by the Divine Providence so happily discovered and disappointed. The Doctrine of Non-resistance would very hardly go down, and the great objection against it was, That it made the Prince absolute, and set him above all Laws, which were Laws no longer than he pleased to have them so ; and thus our Lives and Properties, and Liberties and Religion, were at the Will of the Prince ; and if this were really the natural consequence of the Doctrine of Non-resistance, I suspect it would to this day put a great many English Subjects out of conceit with it ; and yet this is in great measure the design of this Letter, to apply those Sayings or Arguments, which were urged for the Doctrine of Non-resistance, to prove a Dispensing Power inherent and inseparable from the Crown. Now far be it from me to dispute this Point, Whether there be such an inherent Right in the Crown or no, especially as far as the *Judges* have determined that there is ; but this I say, That it is not a necessary Consequence of the Doctrine of Non-resistance, that because we must not resist our Prince, whatever he does, therefore he may *de jure* dispense with what Laws  
he

he pleases ; and I think it is for the Interest of the Crown, that these *two* should be kept distinct ; that the Prerogatives of the Crown should be asserted and maintained upon their own bottom ; and that the Doctrine of Non-resistance ( which must defend all other Prerogatives, and is a better and cheaper security than Forts and Castles ) may not be entangled with other Disputes, which will weaken its Authority, though it be Divine, when it is clogged, as some men will think, with such uneasie and fatal consequences. This, I confess gives me a just indignation against those half-witted Scriblers, who to serve, as they think, a present turn, have endeavoured to lessen the Reputation, and to weaken the Arguments of those Divines, who have appeared so zealous for the Doctrine of Non-resistance and Passive Obedience, by affixing a great many consequences to them, which are neither consequences, nor theirs ; and by wresting their words to other purposes, than they intended ; and for this reason I judge it a very good piece of Service to the Crown to undertake the Vindication of the men, and of their Doctrines.

For Divines to determine points of Law, especially such as require deep skill and insight into the nature of the Constitution, as I observed before, is out of their Sphere ; but obedience to Sovereign Princes, both Active and Passive, is not merely a point of Law, but a Gospel command, and this they not only may, but ought to explain and press upon the Consciences of their hearers : This the Church of *England* her self has done in the Homily of Obedience, and this the Ministers of the Church have taken all occasions to do, and with that success, that there are not more Loyal Subjects in the World, than the true Sons of the Church of *England* ; but farther than this, they have not gone, or if a few dabblers in Politicks have, let them answer for themselves : The Scripture teaches Obedience, but the Prerogatives of Princes, and the Liberties of Subjects, are the matter of human Laws and Constitutions, which properly belong to another Gown.

And



And thus I come to consider what Testimonies this Writer has produced to prove, That it is the Doctrine and Judgment of the Reverend Clergy of the Church of *England*, that the Power of Dispensing with any Laws is an inherent and inseparable Right of the Crown; where I will not meddle with the main point, Whether the King have any such right ( for I will not dispute that ) but whether these Divines, whose Authority is alledged in the cause, ever taught any such Doctrine. He begins with the Reverend Dr. *Hicks* Dean of *Worcester*, and endeavours to render one of the best Books that ever was wrote for Passive Obedience, wholly useless or odious to those men who are not fond of the dispensing Power. But what does the Dean teach? *That the English Realm is a perfect Sovereignty or Empire, and that the King of England by the Imperial Laws of it, is a Compleat, Imperial, Independent Sovereign; that it is a contradiction to call this an Imperial Crown — unless he have all those Rights, which are involved in the very Notion of his Imperial Sovereignty.* Well! to make short work with it, does the Dean say, That this Dispensing Power is one of those Rights which are involved in the notion of Imperial Sovereignty? No, he says no such thing; but this Writer says so for him, that *this Power of dispensing with Penal Laws must be, or nothing, one of those Prerogatives*; which he proves from Sir *Robert Pointz* his Vindication of Monarchy; and what then? suppose it be, does the Dean say so? for that is the only point in question, What his Judgment is?

No, but he says, That the Imperial Crown has all the Rights which are involved in the Notion of Imperial Sovereignty, and our Author can prove, that the dispensing Power is such a Right, and therefore the Dean must grant, that this dispensing Power is a Right inherent in the Crown. Very well! A Popish Priest will allow, that an Imperial Crown has all the Rights that are involved in the Notion of Imperial Sovereignty; now say I, a Supremacy in all Causes, over all Persons, as well Ecclesiastical as Civil, is an inherent Authority of the Imperial Crown; therefore Popish Priests renounce the Supremacy of the Bishop of *Rome*,

*Re me*, and own the Supremacy of the Kings of *England*. If he think this is not a good proof, let him consider this matter over again, which will be worth the while, if it be only to teach him to Reason a little. When there is any Dispute about the rights of Sovereignty, it is a ridiculous inference to say, That he who owns all the Rights of Sovereignty, owns whatever any man says is a Right of Sovereignty; for still he owns no more, than what he himself believes to be so.

Now I am not concern'd to enquire what *Dr. Hicks* believes about the Dispensing Power, but what he has said; and our Author has not produced one word out of his Book about it; and therefore I suppose he could not; for his own words had been a better Authority in this case than *Sir Robert Pointz*: I am sure, where he particularly states and enumerates the Rights of Sovereignty, he takes no notice of it; for as he reckons them up, they are these.

1. *To be accountable to none except God.* 2. *To have the sole Power and disposal of the Sword.* 3. *To be free from all Coercive and vindictive Power.* 4. *Not to be withstood or resisted by force, upon any pretence whatsoever.* Lastly, *To have the Legislative Power, that makes any form of words a Law: The Sovereign Power may indeed be limited as to the exercise of this Power, which may be confined to Bills and Writings prepared by others; but still it is the Sovereign Authority, who gives Life and Soul to the dead Letter of them.* Here is nothing at all about this Dispensing Power, when there was a fair occasion for it: Possibly this was an Omission, which at that time he did not think of, that not being the matter of Dispute; or it may be he was not so well instructed, and did not think this essential to the notion of all Sovereign Power, as seems probable from his two sorts of Imperial Power, either of which make an Imperial Sovereign; such as is limited by the Laws of God and nature only; or such as is limited by the Laws of God and nature, and Civil Laws and Pactions too; The Power in both sorts of Sovereigns is Imperial, full, perfect, absolute and entire; but the exercise of it is different-

Jovian, or an Answer to Julian the Apostate, chap. 10. p. 201. Ed. 1.

*ly bounded and regulated ; one by the Laws of God and Nature, and the other by human positive Laws ; and the latter limitation, doth no more destroy the fulness and perfection and Supremacy of the Power, than the former ; because the Sovereign, who is under Political limitations, as to the exercise of his Power, hath his Power nevertheless as absolutely, fully and entirely in himself, as he that is only under the limitation of Divine and natural Laws.*

De laudibus legum Angliæ C. 9. Rex Angliæ — principatu nedum Regali sed Politico suo populo dominatur. Regnum sic institui, ut Rex non libere valeat populum tyrannide gubernare, quod solum fit dum potestas regia lege politica cohibetur.

*Thus the learned Chancellor Fortescue grants the King of England to have Regal or Imperial Power, though it be under the restraint and regulation of the Power political, as to the exercise thereof ; and as a Fountain that hath Channels and Pipes made for it, within which its waters are bounded in their passage, and through which they are to flow, is nevertheless as perfect a Fountain, and hath its waters as fully and entirely within it self, as any other Fountain, whose waters flow from it at liberty, without any such regulation ; so a King whose Imperial Power is limited by human Constitutions in the exercise of it, is nevertheless as compleat a Sovereign, and hath the Sovereign Power as fully and entirely within himself, as he who is at liberty to exercise his Authority as he will : To be arbitrary is no more of the Essence of an Imperial Sovereign, than to be free in the course of its waters is of the Essence of a Fountain ; but as the Fountain of an Aqueduct, for example, is as perfect, in its kind, and generally more beneficial and useful to mankind, than a free flowing Spring ; so limited Sovereigns are as perfect and essential Sovereigns, as the purely arbitrary and despotick, and generally more beneficial and salutary to the world.*

A great deal more the Reader may find to this purpose in the same place, which possibly may be the reason, why he did not mention this absolute Dispensing Power among the Essential Rights of Sovereignty ; because he might imagine, that this might not be essential to all Sovereigns ; not to those, the exercise of whose Sovereign Power is regulated by Civil and Political Laws,



Laws, who yet are as perfect Sovereigns, as the most arbitrary and despotick Princes. But I do not love to guess at other mens thoughts, nor shall I undertake to justify or condemn this Notion of his; but I think, the Reader by this time sees what little reason there was to appeal to the Dean of Worcester to justify the dispensing Power.

His next Authority is Arch-bishop Bancroft, who it seems asserted, *That the Judges are but the Kings Delegates, and that the King may take what causes he shall please to determine, from the determination of the Judges, and determine them himself, which the Archbishop said was clear in Divinity; that such Authority belongs to the King by the Word of God in Scripture.*

Now I wonder this Writer would produce this, and that for these two Reasons.

1. Because at that very time in the Presence of King James, my Lord Chief Justice Coke contradicted the Arch-bishop, and told the King he could not do it, and gave him his Reasons why he could not, as the Ch. Justice himself reports it, in that place to which this Writer 12 Co. Fol. 64. 5. Jac. refers.

Now methinks here he loses more than he gets; for if he have got a great Church-man, he has lost a very great Lawyer, whose Judgment is more considerable in such matters; for as the Arch-Bishop could tell him what hath been done in Scripture-times under the Jewish Common-wealth, that Moses, and David and Solomon, and other Kings of Israel administered Justice in their own Persons. So the Ch. Justice could tell him, what the Constitutions of this Kingdom, and the regular form of Law will admit, which is more to our purpose.

2. I wonder a little more, how he can prove the dispensing Power from this: The King may judge what causes he pleases himself. Ergo, He can dispense with all Laws when he pleases. Does the Power of hearing and trying causes, and expounding, and interpreting Laws, include in it a power of dispensing with Laws? Then it seems every Judge is by his Office a Dispenser with Laws. If the King have Power of determining causes in

his own person, must he judg with or without Law? If he judg according to the Laws, how does this prove his Power of Dispensing with Laws? Surely this is a Power which can result only from a Supreme absolute and unlimited Sovereignty, not from a mere power of hearing and judging causes, according to the true meaning and interpretation of Laws; to little does this Writer understand what he writes about; and it is great pity there is no more care taken, that the Kings Prerogative do not suffer by such unskillful Scriblers.

His next man is a very great one indeed, not only an Archbishop, but a Martyr for his King and the Church; the famous Archbishop *Laud*, whose Judgment would weigh more with me, than some other mens Reasons. He quotes a saying of his, out of his Book against *Fisher*, but never directs us where to find it; and that is a great book to search all over for one single passage: but however the saying is so innocent, that we may admit it to be his, without farther Enquiry, viz. *That the Supreme Magistrate in the Estate Civil, may not abrogate the Laws made in Parliament; thoke may dispense with the Sanction or Penalty of the Law, quoad hic & nunc, as the Lawyers speak.* Now unless *quoad hic & nunc* signifies a general and unlimited Dispensation for all persons at all times, I suppose it does not reach the plenitude of the Dispensing Power. *Quoad hic & nunc*, I doubt may be expounded as a limitation of the Dispensing Power, which will beget a dispute how far this Power of Dispensing may extend; for which reason I wish he had concealed the Judgment of this great Archbishop; tho the comfort is, he was but a Divine, and therefore his Judgment not Authentick in such matters any farther than this Author has made it so, by appealing to it; especially since he does not give his own Opinion in the case, but refers to the received opinion of Lawyers at that time, which whether it then was for an absolute Dispensing Power, must be first known, before we can know what the Archbishops Opinion was.

But he makes a much greater flourish with Archbishop *Usher*, who wrote an Excellent Book concerning *the Power communicated by God to the Prince, and the Obedience required of the Subject*;

ject ; out of which he has transcribed four or five Pages, how much to his purpose, shall be presently examined : But I must first mind him, what another of his Witnesses, The Right Reverend Dr. *Sanderfon* Bishop of *Lincoln* has observed in his Preface to that Book, Sect. 9, 12, 13. In the 9 Section he takes notice of several Objections which either were or might be made against this Book. The Second is, *That it is not for Divines at all to meddle in these matters, whereof they are not competent Judges, nor do they come within the compass of their Sphere : They ought to be left to the cognizance and determination of States-men and Lawyers, who best understand the constitution of the several Governments, and the force and effect of the Laws of their own several respective Countries, and are therefore presumed to be best able to judge, the one (by constitution) in whom the Sovereignty resideth, and the other (by the Laws) how that Sovereignty is bounded and limited in the exercise thereof.*

In answer to this he says, Sect. 12. *True it is, that for the more ease of the Governors, and better satisfaction of the people in securing their Properties, preserving Peace amongst them, and doing them Justice, the absolute and unlimited Sovereignty, which Princes have by the Ordinance of God, hath at all times, and in all Nations, been diversly limited and bounded in the ordinary exercise thereof by such Laws and Customs as the Supreme Governors themselves have consented to and allowed. As with us in England, there are sundry cases, wherein a Subject, in maintenance of his Right and Property, may wage Law with the King, bring his Action, and have Judgment against him in open Court ; and the Judges in such cases are bound by their Oaths and Duties to right the Party according to Law, against the King, as well as against the meanest of his Subjects. So that it seems, this Bishop thought that the exercise of the Sovereignty might be limited by Laws, and by such Laws as would hold good against the King himself in his own Courts, and therefore that all Laws were not dispensable at the Kings pleasure ; and this Preface was wrote long after his Cases of Conscience, of which more presently. And he adds, That the debating and determining of every doubt or controversie belongeth to the Learned Lawyers, and Reverend*



reverend Judges who are presumed to be best skilled in the Laws and Customs of the Land, as their proper study, wherein they are daily conversant; and not to Divines, who (as Divines) are not competent Judges in these matters, nor do they come within the compass of their sphere. By which one would guess that this Reverend Bishop did not apprehend, that he himself had been guilty of determining so nice a Point of Law as the *Dispensing Power*, tho this Author has discovered for him, that he has.

Well, but how does he bring off the Arch-bishop after all this, for meddling with such nice points? As to that he tells us, *Seet. 13.* That there is no need of bringing him off: That, *in relation to the present Treatise*, all that he had said about Divines determining Law Cases, as far as they related to Conscience, *might well enough have been spared*, wherein the Reverend Author, without meddling with these *Punctilio's* of the Law, undertaketh no more but to declare and assert the Power of Sovereign Princes, as the Godly Fathers and Councils of the ancient Catholick Church, from the evidence of Holy Scripture, and the most judicious *Heathen Writers* by discourse of Reason from the light of Nature, have constantly taught and acknowledged the same, as to the unprejudiced Reader by the perusal of the Book it self will easily appear. From whence one would guess, that Bishop *Saunderson* did not apprehend, that Archbishop *Usher* had determined any one point of Law, about the absolute or limited exercise of the Sovereign Power, according to the Constitution of these Realms; and therein he and our Author differ, who has found the Dispensing Power plainly determined by the Archbishop. But whoever consults the Book it self (and it will reward any man's pains, who will do it) will find, that the Bishop was in the right, and those Reasons which the Bishop urges, will convince him, That he was so. For he will find, that the Archbishop does not meddle with the particular Laws and Constitutions of these Kingdoms, but only urges the Authority of Fathers and Councils, and the Holy Scriptures, and the consent of Heathen Writers, which can no more determine what the particular Laws and Constitu-

tions

tions of these Kingdoms are, than the Laws of *England* can the Customs of the *Roman* Empire. The Archbishop only considered what Rights belong to the Sovereign Power, wherever it is, by the content of Scriptures, Fathers, Councils and Heathen Writers, who followed the light and conduct of natural Reason; and took it for granted, as the Bishop observes he well might, That the Kings of *England* are Sovereign Princes, and therefore have all the Rights of Sovereignty belonging to their Crowns: But how the exercise of this Sovereign Power is limited by the particular Laws and Customs of Nations, and by the consent and grants of Sovereign Princes themselves, which Bishop *Sanderson* asserts, *has at all times, and in all Nations, been diversly limited and bounded*, this the Archbishop says nothing of; and I cannot then guess, how he should determine this point of the *Dispensing Power*. But let us now consider what this Author alledges to prove, That the Archbishop did teach, that this *Dispensing Power* is an inherent and inseparable Right of the Imperial Crown: And to set this matter in a clearer light, I shall place his quotations in that natural Order they stand in in the Archbishops Book.

He having then *searched into the ground of Sovereignty, and (by Reason, and Witnesses of all sorts) deduced the Original thereof from no lower an head than Heaven it self*, as he himself tells us, he proceeds to look a little into those Royal Prerogatives, which are annexed to the eminent Estate of such supreme Governors. And the principal thing he takes notice of, is their exemption from Laws; as the Senate of *Rome* decreed to *Vespasian*, That what Laws soever either of the Senate or People it was ordained, that the Emperor's Predecessors were not tied to, from those he should be loose also: So that this freedom from Laws, tho a Branch of the Imperial Power, was decreed and confirmed by the Laws of the Empire, and granted to the Emperor by the *Roman* Senate; which indeed signified making him Emperor, for without this he had not been an Imperial Prince.

The Power  
of Princes p.  
66 Ed. 2.  
1683.

P. 68.

But what is this exemption from Laws which belongs to the Imperial Crown? And that he tells us from the Civilians, That they

*they are free from all Coactive Obedience to them, and are held by none of the written Ordinances. For the understanding of which, he distinguishes between God's Law, the Law of the King, and that which is the Law of God and the King together. As for God's Law, which signifies the unwritten Law of Nature, or the Written Word, the greatest Prince in the World is as much bound to obey it, as the meanest Subject. But then he adds, (which is one of our Author's quotations) By the Law of the King, I understand such Ordinances as are meerly Civil and Positive; the Coactive Power whereof being derived from him who is the supreme Law-giver under God on Earth, he himself cannot be properly said to be tied thereby. Which he proves from Grammarians, Civilians, and Schoolmen, and by this good Argument. As no man therefore is superior to himself, so no man hath jurisdiction over himself; because none can oblige a man against his Will, but only his Superior; and the jurisdiction over a mans self may be dissolved at pleasure. Which only signifies, that the King is not bound in his own person to observe the Laws as Subjects are, because no body has any jurisdiction over him but himself, and no man can command himself any longer than he pleases. Right! But suppose a Sovereign Prince has bound himself by Oath to God and his Country, that he will observe the Laws, is he not as much obliged then to observe the Civil and Positive Laws of his Country, made and confirmed by his own Authority, as he is to observe the Laws of God? for tho by making a Law he does not immediately oblige himself yet by his Oath he may. The Archbishop only considered what was the Right of Sovereign Power without any Super-induced obligation, not what a Sovereign Prince might oblige himself to by Sacred and Solemn Oaths: And yet I wonder this Writer should have no more regard to the Sacred Majesty of Princes, than to found their Rights upon such a Power, as the wisest and best Princes have not thought fit to use: As he might have learnt in the same place had he thought fit to have read on. For there the Archbishop quotes the saying of p. 74. *Valentinian the younger. It is in truth a greater thing than the Empire, to submit the Princes self unto the Laws. And that of Alexander Severus, Although the Law**

*of*



of the Empire hath freed the Emperor from the Solemnities of the Law, yet nothing is so proper for Empire as to live by the Laws. And that which Severus and Antoninus set down so oft in their Prescripts; *Altho we be loosed from the Laws, yet we live by the Laws.* Whereunto also we may add, that commendation which Plutarch giveth to Alexander the Great; *That he conceived he ought to be thought Superior to all Men, yet subject to Justice;* That is, to be obliged to observe all the Laws of Justice, not to be subject to any Coercive Power. And Pliny to Trajan, *He thinks himself to be one of us, and so much the more excellent and eminent he is, that he so thinketh; and no less remembreth that he is a Man, than that he is a Ruler of Men.* For he who hath nothing left to increase his height, hath but this one way to grow by, if he submit himself, being secure of his Greatness. And in his direct Speech to the Emperor himself; *Thou esteemest us the same, and thy self the same, and in this only greater than the rest, that thou art better than they.* And, *Thou hast made thy self subject to the Laws, O Caesar, which were not written to restrain the Prince by; but Thou wilt have nothing more lawful to Thee, than is to Us.* Now, when this has been the Sense and Practice of the wisest and best Heathen Princes; that it is an Imperial Vertue and Dignity, tho they are free from Laws, yet to submit themselves to the observance of Laws: I should think it no great Complement to a Christian Prince to found any part of his Imperial Power upon such Exemptions, as Sovereign Power must have, but yet, which Sovereign Princes think it their greatest Glory not to use: For if the Exercise of such a Liberty be inglorious; that Power, which is founded on it, cannot be glorious.

And here comes in the first Citation of this Writer, who I think has not mended the Arch-Bishop's Sense by altering his Method. *For such positive Laws as these, being (as the other works of Men are) imperfect, and not free from many discommodities; if the strict Observation thereof should be perused in every particular, it is fit the Supream Governour should not himself only be excepted from subje-*

*The Power of  
the Prince. P.  
75.*

*tion thereunto* (which shows that before, he had only spoke of the personal exemption of the Prince from the necessity of obeying his own Laws, and that he now enters upon a new Prerogative of the Crown in the Words that follow) *but also be so far Lord over them, that where he seeth cause he may abate, or totally remit the Penalty incurred by the breach of them, dispense with others for not observing them at all, and generally suspend the execution of them, when by experience he shall find the inconveniencies to be greater than the profit that was expected should redound thereby to the Common-wealth.* Plutarch setteth this down as a chief point of that natural skill, which Philopamen had in Government, that he did not only rule according to the Laws, but over-ruled the Laws themselves, when he found it conducing to the Weal-Publick. Now, I do not see one Word in this, but what is the undoubted Right of the Supream executive Power: For it is impossible any Nation should be well and happily governed, where this Power is not; And that for this Reason, which the Arch-Bishop gives; Because Human Laws are imperfect, and therefore there must be a living Authority to supply their Defects, and to temper their Severities, and to pity and relieve Subjects, when the case is truly pitiable. But then there are some natural Limitations of the exercise of this Power in the most absolute and despotick Princes, and there may be Political Limitations of it by the consent of Sovereign Princes themselves, according to the Laws and Constitutions of several Kingdoms. For tho the Imperial Crown can be divested of no part of Sovereign Power, yet the exercise of it may be directed and limited by publick Laws, as we heard before from Bishop *Sanderfon*. This last the Arch-Bishop takes no notice of, it not being his design, as you heard before, to adjust the Rights of Princes by Political Laws, but only to consider in general, what are the essential Rights of Sovereign Power, without examining how the exercise of it is diversly limited in different Countries. And therefore let us only consider what those natural Bounds and Limits are, which he has set to this *dispensing and suspending Power*. And they are included in the reason of this Power,

Power, because all Human Laws are imperfect, and therefore there wants a Sovereign Power, which is so far Superior to all Laws, that it can correct their Faults, and supply their Defects, and temper them to such particular Emergencies and Cases, as could not be foreseen when the Laws were made. For if human Laws could be so exactly framed, as to fit all possible cases, if the Law were for the good of the Common-wealth, the *dispensing* with, or *suspending* the execution of such Laws, would be a publick mischief: And a Power which could serve no good end, could be no Prerogative of Sovereignty. And therefore the very Dispensation must be for the publick good, or else it is the abuse, not the natural Right of Sovereign Power. To which purpose he mentions the Opinion of John of Sarisbury, P. 79. *I do not take away the dispensing with the Law out of the Hands of the Powers, but such Precepts or Prohibitions, as have a perpetual Right, are not, as I think, to be subjected to their Will and Pleasure. In those things only that are mutable, the Dispensation with the Letter of the Law is to be admitted, yet so as by the compensation of Honesty or Utility the Intention of the Law may be intirely preserved.*

So that according to this Rule, the natural Instances of this dispensing Power seem to be these: When a Law is made, and is for the Publick Good, but happens to fall very severely upon some particular Persons, without their own fault, only because such particular Cases were not and could not be considered in making the Law: here the Equity of the Prince ought to relieve such Sufferers; according to his long Quotation out of *Aeneas Sylvius* P. 91. which this Author has transcribed at large, and we readily own. When the Penalty annexed to the Law, may in some particular cases be remitted without the publick Injury, and may be thought very just and convenient with respect to the pittiabie Circumstances, or former Merits of the Person offending; as the Archbishop observes, and this Author from him, P. 79. *While the Laws do stand in force, it is fit that sometimes the King's Clemency should be mingled with the Severity of them; especially when by that means the Subjects may be freed from much detriment and damage.* Which belongs to



the Regal, not to the Ministerial Power; *the condition of the Magistrates, whose Sentence is held corrupt, if it be milder than the Laws, being one thing; the Power of Princes, whom it becometh to qualify the sharpness of them, a far different matter.* If any thing happens after the making of a Law, which was not foreseen when it was made, and which is besides, or contrary to the original intention of the Law-makers, and renders the execution of that Law manifestly and notoriously oppressive to the Publick; the Prince may certainly suspend the Execution of such Laws, till they be alter'd or repealed by the Power which made them, or in the same regular Exercise of the Legislative Power, as they were first made. This dispensing, and pardoning, suspending Power is so necessary to the Publick Good, that for my part I would not willingly live under any Government, which wanted the Exercise of this Power. And if this be all this Writer intended to prove by his long Quotations out of the *Archbishop*, I am perfectly of his mind, that the *Archbishop* was of his Opinion, and so, I believe, is every Man who considers any thing. For the Exercise of such a Power as this, is no Injury to the Laws, nor to the Legislative Authority. For in this way, the Prime and original Intention of the Law is always secure, and can never be dispensed with; the general Force and Vigor of the Law is maintained, though it be remitted in some particular cases; all Mens Rights and Properties are secure, which are secured by the Law; (for the Laws can be dispensed with, not for the hurt and damage, but only for the Benefit of the Subject, and therefore no legal Rights can be taken away by a Dispensation) and more than that, some Men may find Refuge and Sanctuary in the Clemency and Sovereign Power of the Prince, from the Severities of the Law, as far as is consistent with the Publick Good and Safety. But any other dispensing Power than this, the *Archbishop* says nothing of. And this, I think, is answer enough to what he alledges out of *Archbishop Usher*.

After these 3 *Archbishops*, the next who follows, is *the humble, patient, and learned Dr. Robert Sanderson, late Lord Bishop of Lincoln,*

Lincoln; and were he living, this Writer would exercise all the Humility and Patience he had, without offering him any occasion to shew his Learning. At the end of his 9<sup>th</sup> Lecture concerning the final Cause of humane Laws, Sect. 16. he comes to explain that Aphorism, *Salus Populi Suprema Lex*, *The Safety of the People is the Supreme Law*, which was expounded in those days, to set up the Interest and Safety (as they pretended) of the People in opposition to the King; which he does with so great Learning and Judgment, as not only to confute, but to shame all such Pretences. From the 18<sup>th</sup> Sect. this Writer, among others, which are nothing to his purpose, transcribes these Words, which I suppose he thought were:

*A King that gives Laws and Statutes to his People, will not (or did not intend) to be bound up by the Laws, that it should not be lawful to him, the Safety of the Commonwealth being in apparent danger, to provide for the Safety of the Kingdom and People committed to him by God, even against the Words of the Law. — It is lawful for the Prince in the Preservation of his own and his Subjects Safety, to lay aside for a while all strict observance of the Laws, and to make use a little of an arbitrary Right, lest by too unseasonable and superstitious Reverence of the Laws; he may suffer both his own Person, and his People that are subject to him, and even the Laws themselves to fall into the Power of his Enemies. Ergo, the Power of dispensing with Penal Laws is an inherent and inseparable Right of the Crown. Quod erat demonstrandum.* An excellent Logician! to make an accidental Case the measure and Standard of a constant and unalterable Right. To prove that to be a Right when there is no necessity, which nothing but Necessity can justify; nay, to make Necessity, which has no Law, the Rule and Pattern of Legal Administrations; to prove a dispensing Power in ordinary cases, from a Right or Necessity to act without or against Law in extraordinary cases: For the Bishop does not here say, that in such absolute Necessity the King may dispense with Penal Laws, but that he may act against the Words of the Law, that he may lay aside for a while (while that Necessity lasts) all strict observance of the Laws, and make use of an arbitrary Right. So that if he can draw any Inference from this to ordinary cases; where

Non ira se voluisse Legum vinculis attrin-  
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where there is no such absolute danger, it must be to prove a lawless and arbitrary Power, which is a great deal more than a Power of dispensing with Penal Laws. In the very next Section ~~he~~ says almost as much of the People; That *it is lawful for Subjects in defence of their Prince and of themselves (when there is such a pressing necessity, that a pious and prudent Man could not doubt, but if the Lawgiver himself were present, he would grant a relaxation of the Law) to have greater regard to the common Good, which is the supreme Law, and the end of all Laws, than to any particular Laws, which were made not to prejudice but to serve the common Good.* Now should any man hence draw a general Maxim, that all Men must have greater regard to the publick Good than to the observance of the Laws of their Country, it would be as bad Logick, as it is Divinity and Law.

The last Bishop he calls in to bear his Testimony, is the present Right Reverend Bishop of *Chester*: but tho I have ventured to defend our dead Bishops, who cannot speak for themselves but in their Writings, I dare not make so bold with the living: That great Man understands his own Sense best, and if he be misrepresented, wants neither Learning nor Interest to right himself.

And thus we proceed to the Reverend Doctors of our Church, who I believe will be found to speak the same things with the most Reverend and Right Reverend Bishops. The first is Dr. *Heylin*, whose words are said to be these: *He (viz. the King) hath Authority by his Prerogative Royal to dispense with the rigor of the Laws, and sometimes to pass by a Statute with a Non-obstante.* But where he says these words, he does not tell us, and therefore I know not where to find them, and therefore know not upon what occasion they were said, nor to what they are applied. But, as you have already heard, no Man doubts, but in some cases the King may dispense with the rigor of the Laws, and before the Judges had declared their Opinions in the Point, I know some good Lawyers, who did not think, that some few Instances of a *Non-Obstante* was a sufficient proof of a general dispensing Power; and why might not Divines be of that mind too? And then the Doctor's saying, that the King might *sometimes* pass by a Statute with a *Non-obstante*, does not prove that he was for the dispensing Power



Power in the modern Latitude of it; for though it was as good Law before, as it is now, yet it might not be so well understood.

The next in order is the *Learned and Judicious Dr. Isaac Barrow*, too learned and too judicious to be commended by so injudicious a Writer, as will appear from what he transcribes out of his Treatise concerning the Pope's Supremacy. I was mightily surprized to think, what should come into the Doctor's Head to state so nice a Point of Law as the dispensing Power, in a Treatise of the Pope's Supremacy, which seem'd as foreign to the business as could well be imagined; and I was as much afraid that I should not have the Satisfaction of seeing what it was, for he was resolved, if Men would be so curious to examine, they should take pains for it; for he directs to no place, where to find what he cites, but sends his Readers to seek for three short Sentences in a Book of 428 Pages; but by good luck I have found them, and am very much edified by them.

The first is this. *It is indeed a proper endowment of an absolute Sovereignty, immediately and immutably constituted by God, with no Terms or Rules limiting it, that it's Will declared in way of Precept, Proclamations, concerning the Sanction of Laws, the abrogation of them, the dispensation with them should be observed.* Where the Doctor was shewing how the Popes of Rome arrogate to themselves the most absolute and unlimited Sovereignty in the Church, as it follows, *This Priviledg therefore in a high strain the Pope challengeth to himself, asserting to his Decrees and Sentences the force and obligation of Laws, &c.* The Mystery of this Quotation is this, that he would have his unwary Readers to believe, that this endowment or priviledg or Prerogative of Sovereign Power, that it's Will declared in way of Precept, Proclamations, concerning the Sanction of Laws, the abrogation of them, the dispensation with them, should be observed, is immediately and immutably constituted by God, with no terms or rules to limit it: and thus indeed it is home to his purpose, but shoots vastly beyond the Mark: For this does not only prove, that the King may dispense with Laws by his Proclamation, but that he may make and abrogate Laws too by his Proclamation.

*Treatise of the  
Supremacy. P.  
311. Quarto.*

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But the Doctor's plain Sense is this, That such an absolute Sovereignty, as is immediately and immutably constituted by God, with no terms or rules to limit the exercise of it (and such a Sovereignty the Popes have challenged) has this Endowment or Prerogative, that its Will declared in way of Precept, Proclamations, concerning the Sanction of Laws, the abrogation of them, the dispensation with them, should be observed. And who ever denied this? But I find no one asserting, That the Kings of *England* were such absolute and unlimited Sovereigns, by God's immediate and immutable Constitution: That their Proclamations were as good Law, as any Acts of Parliament: That they could make and abrogate Laws by their Proclamations. I am sure Dr. *Barrow* said no such thing, tho our Author did believe, or would have his Readers believe that he did, unless he quoted it to no purpose. And that is not improbable by his next Quotation, which is to as little purpose as one could wish. P. 318. *The power of enacting and dispensing with Ecclesiastical Laws touching exterior Discipline, did of old belong to the Emperor (and therefore not to the Pope, which is the design of it) and it was reasonable that it should; because old Laws might not conveniently suite with the present state of things, and the publick Welfare; because new Laws might conduce to the good of the Church and State, the care of which is incumbent on him; because the Prince is bound to use his Power and Authority to promote Gods Service, the best way of doing which, may be by framing Orders conducive thereto.* And what is all this to a Power of dispensing with Acts of Parliament, whether they concern Church or State? Who ever, but the Pope, denied the Princes Authority in Ecclesiastical Affairs? If the Oath of Supremacy indeed prove the dispensing Power; then not only a few Bishops and Doctors, but the whole Church of *England* teaches it; if it does not, our Author might have spared this Quotation.

And so he might his next, P. 400. *It is a Priviledg of Sovereigns to grant Priviledges, Exemptions, and Dispensations.* No doubt but it is, and they may in many Cases do it by Law, which owns this Authority in the Sovereign. There are many legal Priviledges, Exemptions, Dispensations, in the Power of the Prince. *Ergo*, What? Thus much for Dr. *Barrow*, and the Pope's Supremacy, which was never favourable to the Prerogatives of Princes. The

The next in course is *The Reverend Doctor Sherlock Master of the Temple*, who says in a positive manner: It does not become any man, who can think three consequences off, to talk of the Authority of Laws, in derogation of the Authority of the Sovereign Power; The Sovereign Power made the Laws, and can repeal them and dispense with them, and make new Laws. The only Power and Authority of the Laws is in the Power that can make and execute Laws. Sovereign Power is inseparable from the Person of a Sovereign Prince.

Here our Author breaks off, for he durst go no further, it immediately following: *And though the exercise of it may be regulated by Laws, and that Prince does very ill, who, having consented to such a regulation, breaks the Laws; yet when he acts contrary to Law, such Acts carry Sovereign and irresistible Authority with them, while he continues a Sovereign Prince.* Now it is all out, and let him make his best of it.

But to expose the Shuffling Arts of this Writer, it will be convenient to consider what the Dr. was a proving, The Case of Nonresistance of the Supreme Powers, chap. 6. p. 185. when these words dropt from his Pen. Having at large proved the Doctrine of Non resistance from Scripture Testimonies, and the common Principles of Reason, in the Sixth Chapter he answers some Objections against it. The Second Objection is,

*That a Prince has no Authority against Law, as is urged in Julian the Apostate: There is no Authority on Earth above the Law, much less against it. It is murder to put a man to death against Law, and if they knew who had Authority to commit open, barefaced, and down right murders, this would direct them where to pay their Passive Obedience: But it would be the horrid'st Slander in the World, to say that any such Power is lodged in the Prerogative, as to destroy Men contrary to Law.* P. 109.

To this the Doctor answers, *Now I perfectly agree with them in this also, that a Prince has no just and legal Authority to act against Law; that if he knowingly persecute any Subject to death contrary to Law, he is a Murderer; and that no Prince has any such Pre-*



rogative to commit open, bare-faced, and down-right Murders. But what follows from hence? Does it hence follow, therefore we may resist and oppose them if they do? This I absolutely deny, because God has expressly commanded us not to resist. And I see no inconsistency between these two Propositions, that a Prince has no legal Authority to persecute against Law, and yet that he must not be resisted when he does. — He who exceeds the just bounds of his Authority, is lyable to be called to an Account for it, but he is accountable only to those who have a Superior Authority to call him to an Account — Thus the Sovereign Prince may exceed his Authority, and is accountable for it to a Superior Power. But because he has no Superior on Earth, he cannot be resisted by his own Subjects, but must be reserved to the Judgment of God, who alone is the King of Kings.

In answer to what is said, That an Inauthoritative Act, which carries no obligation at all, cannot oblige Subjects to Obedience (thereby meaning Passive Obedience) he urges, That it is very false and absurd, to say that every illegal is an Inauthoritative Act, which carries no obligation with it. This is contrary to the practice of all human Judicatures, and the daily experience of Men, who suffer in their Lives, Bodies, or Estates, by an unjust and illegal Sentence. Every Judgment, contrary to the true meaning of the Law, is in that sense illegal; and yet such illegal Judgments have their Authority and Obligation, till they are rescinded by some higher Authority: This he explains at large, and comes at last to P. 195. enquire, Whence an illegal Act or Judgment derives its Authority and Obligation? The Answer is plain; It is from the Authority of the Person, whose Act or Judgment it is. Which he proves and confirms in four Propositions.

1. That there must be a Personal Power and Authority antecedent to all human Laws. For there can be no Laws without a Law-maker; and there can be no Law maker unless there be one or more Persons invested with the Power of Government, of which making Laws is one branch: For a Law is nothing else but the publick and declared will and command of the Law-maker, whether he be  
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*the Sovereign Prince or the People : Which shows in what sense the Dr. affirmed, That Sovereign Power made the Laws, and can repeal them, and dispense with them, and make new Laws, viz. That there is no such thing as a Law without a Lawgiver, who can make, and repeal, and dispense with Laws, and without whose Authority too the Law can have none. For without Doubt the same Power that makes Laws can repeal and dispense with them too.*

2. *And hence it necessarily follows, That a Sovereign Prince does not receive his Authority from the Laws, but Laws receive their Authority from him — For the Law has no Authority, nor can give any, but what it receives from the King, and then it is a wonderful Riddle how the King should receive his Authority from the Law.*

3. *Hence it follows, That the being of Sovereign Power is independent on Laws : That is, As a Sovereign Prince does not receive his Power from the Law, so, should he violate the Laws by which he is bound to Govern, yet he does not forfeit his Power; He breaks his Faith to God and to his Country, but he is a Sovereign Prince still. And in this sense the Dr. affirmed, That Sovereign Power is inseparable from the Person of a Sovereign Prince.*

4. *Hence it plainly appears, that every illegal Act the King does is not an Inauthoritative Act, but lays an Obligation on Subjects to yield, if not an Active yet a Passive Obedience. For the King receives not his Sovereign Authority from the Law, nor does he forfeit his Authority by breaking the Law; and therefore he is a Sovereign Prince still, and his most illegal Acts, though they have not the Authority of the Law, yet they have the Authority of Sovereign Power, which is irresistible and unaccountable.*

*Now this shows in what sense the Doctor immediately adds, It does not become any Man, who can think three consequences off, to talk of the Authority of Laws in derogation to the Authority of the Sovereign Power. Which does not signify that the Law cannot abridge the Kings dispensing Power, nor have the*

Authority of a Rule to him (which he does not meddle with) but that no Law can have such Authority over a Sovereign Prince, as to un-king him, or deprive him of his Sovereign Authority, and make all his illegal Acts inauthoritative, if he breaks it : For that is the direct answer to the Objection ; and he seems to have looked no further ; and indeed to speak the truth, his Argument holds no further ; for it does not follow, that the King is not bound to keep the Laws ; but he is a King still, and cannot forfeit his Sovereign and irresistible Authority, though he breaks them. But if this Doctors Judgment be of any force, we may learn what his Opinion was, (if he be not now better informed) by his answer to the fourth Objection, though possibly he will not thank me for my pains in transcribing it.

P. 207. 4. *The next objection against the Doctrine of Non-resistance, is this, That it destroys the difference between an absolute and limited Monarchy ; between a Prince whose Will is his Law, and a Prince who is bound to govern by Law : which undermines the Fundamental Constitutions of the English Government. To this he answers, The difference between an absolute and limited Monarchy, is not, that Resistance is lawful in one case, and unlawful in the other, for a Monarch, the exercise of whose Power is limited and regulated by Laws, is as irresistible as the most absolute Monarch whose Will is his Law : and if he were not, I would venture to say, that the most absolute and despotick Government, is more for the publick good than a limited Monarchy.*

*But the difference lies in this, that an absolute Monarch, (where by absolute, it is plain he means a despotick Prince ; for otherwise, a limited Monarchy may be called, and often is, an absolute Sovereignty,) is under the Government of no Law, but his own Will : He can make and repeal Laws at his pleasure, without asking the consent of any of his Subjects : he can impose what Taxes he pleases, and is not tied up to strict Rules and Formalities of Law in the execution of Justice. But it is quite contrary in a limited Monarchy ; where the exercise of the Sovereign Power is regulated by known and standing Laws, which the Prince can neither make nor repeal without the*



the consent of the People, &c. No, you will say, the case is just the same. For what do Laws signify, when a Prince must not be resisted, though he break these Laws, and govern by an arbitrary and lawless Will? He may make himself as absolute as the Great Turk or the Mogul, when ever he pleases: For what should hinder him, when all mens hands are tied by this Doctrine of Non-resistance? now it must be acknowledged, that there is a possibility for such a Prince to govern arbitrarily, and to trample upon all Laws: And yet the difference between an absolute and limited Monarchy, is vastly great.

1. For this Prince, though he may make his Will a Law to himself, and the only Rule of his Government, yet he cannot make it the Law of the Land. He may break Laws, but he cannot make nor repeal them: and therefore he can never alter the Frame and Constitution of the Government; though he may at present interrupt the regular administration of it: And this is a great security to Posterity, and a present restraint upon himself.

2. For it is a mighty uneasie thing to any Prince, to govern contrary to known Laws: He offers as great and constant violence to himself, as he does to his Subjects.—— The breach of his Oath to God, and his promises and engagements to his Subjects, makes the exercise of such an arbitrary Power very troublesome. And though his Subjects are bound not to resist him, yet his own guilty fears will not suffer him to be secure: And arbitrary Power is not so luscious a thing, as to tempt Men to forfeit all the ease and pleasure and security of Government for the sake of it.

3. Though Subjects must not resist such a Prince, who violates the Laws of his Kingdom; yet they are not bound to obey him, and serve him in his Usurpations.—— Subjects are bound to yield an active obedience only according to Law, though they are bound not to resist when they suffer against Law. Now it is a mighty uneasy thing to the greatest Tyrant, to govern always by force. And no Prince in a limited Monarchy can make himself absolute, unless his own Subjects assist him to do so.

4. And yet it is very dangerous for any Subject to serve his Prince contrary to Law; though the Prince himself is unaccountable and irresistible.

irresistible, yet his Ministers may be called to an account, and be punished for it; and the Prince may think fit, to look on quietly, and see it done: or if they escape at present, it may be time enough to suffer for it under the next Prince: which we see by experience makes all Men wary how they serve their Prince against Law: None but Persons of desperate Fortunes will do this carelessly; and these are not always to be met with, and are seldom fit to be employed.

5. And therefore may I observe, that by the fundamental Laws of our Government, as the Prince may govern by Law; so he is irresistible: and shews, that our wise Law-makers did not think that Non resistance was destructive of absolute Monarchy.

Not long since this was thought very good Counsel, and I am sure it is very necessary to keep People in Obedience to their Prince till; for which reason I thought it worth mentioning, though it doth not reach the height of the depending Power.

And now I find our Author begins to run low, when he takes up with Doctor Aijon, who says, *In the Kings Power it is to remit the severities of the penal Laws, whereby he may manifest his clemency and goodness, as well as his greatness and justice, by graciously pardoning the smaller Breaches of his Laws, and the more capital offences, which he might most justly punish*: For whoever denied this? The King, without doubt, may not only pardon some smaller Fault, but the greatest of Crimes: but how this is to his purpose, I still want to be inform'd.

And so I do, as to what he quotes out of Doctor Puller's Book, concerning *The Moderation of the Church of England*. If that Equity which consists in remitting of the rigour of the Laws, when they press too hard upon particular Persons; or in supplying the defects of the said Laws, where they provide not sufficiently for particular cases, which is all Doctor Puller contends for, be all that this Writer wou'd have, what need he to have writ a book about it, and confirm'd it with so many great Authorities; when I don't know, that in this he has an Adversary in the World; if he have, it is fit such a man, if ever he stood in need of Clemency and Mercy, thou'd never have it. Who thinks the Court of Chancery

Chancery, an illegal Court ? and yet that is properly a Court of Equity. It is one thing to moderate the rigour of Laws in favourable cases ; another to dispense universally with such Laws, as, if Doctor *Puller's* Book prove any thing, are very moderate already ; and yet this may be the Prince's Prerogative, resulting not from Moderation and Equity, but a Plenitude of Power.

As for his Anonymous Author, with whom he concludes, I neither know him nor his Book, and suppose the cause will not depend upon a single Authority.

Thus we have heard what *the Reverend Prelates and Doctors of the Church of England* have said of this matter : in the next place, he tells us what were the Reasons that induc'd the Reverend Judges in Westminster-Hall so openly and solemnly, after mature deliberation, to declare their Resolutions in this Point for the thing. But I had much rather he had told us what their Resolution was, how far they extended this dispensing Power ; whether to all Cases, or only to some, or to all, or to some as the King at any time judges necessary ; for I have heard very different Accounts of the matter, but cou'd never see any authentick Record of it : To have inform'd us in this matter, had been a real Kindness, because 'tis the Rule of our Actions, of our Words, and of our Writing too : for when I once know what the Judges declare to be Law, I will enquire no further ; their Opinions solemnly declar'd, must silence all Disputes, because they carry Power and Authority with them, unless any superiour Authority think fit at any time to judge over their Opinions.

This makes it very necessary to know what the Judgment and Resolution of the Judges is, especially in any great and concerning Points ; but as for their Reasons I am not so fond of knowing them, because it is the Authority of the Men, not of their Reasons, which must determine such matters : for Mankind reasoning so very differently as they do, there never cou'd be any final Determination of such Cases, if all men must be first satisfied in the validity of their Reasons : And therefore I think this Wri-



ter has done no service to the Cause, by making their Reasons the Subject of Dispute; for tho' they may be very good Reasons, yet it may be, all men will not think so; and then such men will be apt to be dissatisfied, that a Judgment (which as they think) is not founded on sufficient Reasons, shou'd have such great Authority.

For it is not enough to say as this Writer does, *That the Reasons they went upon, were only such as were exactly correspondent with the avow'd Doctrines before recited; and that by this Declaration of theirs; the Law of the Kingdom of England concerning this Sovereign Power in the Crown, is no more than what was before publickly asserted to be the Divinity of the Kingdom.* For tho' the *Divinity of the Kingdom* is a great word, and cannot be determin'd by a Jury of *Divines*, who liv'd in different Ages, and never spoke together about it; nay, indeed can never be determin'd by any single *Divines*, tho' never so many, and never so learned, but only by the Authority of a *Convocation*, or *National Synod*; yet those who think the Reasons not good, will like them never the better, because some *Divines* have been of that mind, when they can so out-number (as I said before) the Church of *England* with Popish and Fanatick *Divines*, who teach another Doctrine. And besides this, I doubt he puts it upon a very dangerous Issue. For, if after all his confidence and assurance, other men shou'd not think that these Reasons do so exactly correspond with the avow'd Doctrines of the Bishops and Doctors of the Church of *England*, that they have neither taught the same Doctrine, nor us'd the same Reasons, (as possibly this Author by that time he has read thus far, may see reason to suspect) what then! had he not better have let all this alone? have not the *Reverend Judges* great reason to thank him for bringing their Judgment and Reasons to such a Test, as they will not bear? They need not the Authority of *Divines* to justify their Determinations at Law; and therefore it is, at best, over-officiousness, and a lessening of their Authority, to make such Appeals, besides the folly and rashness of making such Appeals as will do no Service.

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But suppose these were not the *Judges* Reasons, how will he justify himself for publishing these Reasons as theirs, without their Authority? which I dare boldly say, he never had. Nay, I dare lay considerable odds, that these were not their Reasons, as he has worded and represented them, and that for more Reasons than one: Did all the *Judges* agree upon these Reasons, and make a Record of them? or has he seen them signed with all their Hands? if not, how does he know that these are their Reasons? For a Bench of Judges may agree in their Conclusion, when they differ in their Premises and Reasons: And I will believe that they had other Reasons besides these here mentioned. Possibly some such thing as this might be said in Court, but I believe, not as it is here reported; and it is an Affront to *Judges* in such a weighty Point as this, to declare their Reasons upon meer hear-say; when it is so evident, that of twenty men, who hear the same thing, scarce two of them shall exactly agree in their Report; so uncertain and variable a thing is Oral Tradition, which how infallible soever it may be in Divinity, is not so in Law.

But to let all this pass, and to allow these Reasons to be very good; for I will no more dispute any Reasons, which are attributed to the *Judges*, than I will dispute their Resolutions; yet the question still remains, Whether these Reasons are exactly the same with what the Divines of the Church of *England* have formerly taught? This he asserts, and this, I hope, I may examine without any offence; for it is no Condemnation of their Reasons, tho' I shou'd say, that they were never us'd by Divines. Now a Reason has a necessary Relation to the Conclusion, or to that which is to be prov'd by it; for tho' a hundred men should say the same thing, and draw a hundred several Conclusions from it, you cannot say, that their Reason is the same, because their Conclusions are not the same; for those only reason alike, who from the same Premises draw the same Conclusion: so that tho' every one of these Propositions, which are here said to be the *Judges* Reasons, had been

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asserted

asserted a hundred times over by the *Divines* of the Church of *England*, yet if they did not draw the same Conclusion from them, which the *Reverend Judges* have done, they cannot be said, to be the same Reasons; and whether they have done that, or not, may be learn'd from what has been already said.

And yet in truth, I cannot tell whether the Premises be the same or not; for they are set down in such loose, and general terms in this Paper, as admit of very different Senses; and in which Sense they are understood by the *Reverend Judges*, is not said. And therefore I shall shew you in what Sense these Propositions have been own'd by the *Divines* of the Church of *England*, and then those who know the *Judges* sense of them, will easily see where they agree, and where they differ.

1. *That the Kings of England are Sovereign Princes.*

This is universally own'd by the *Divines* of the Church of *England*; but then they make some difference between Sovereign Princes, not with respect to the fulness of Power, for they have all the Rights of Sovereignty, but with respect to the Exercise of this Sovereign Power: for some Princes are under no Restraints and Limitations, but only the Laws of God and Nature: they can make what Laws they please, repeal them when they please, dispense with them as they please, without the consent of any but themselves: Other Sovereign Princes, tho' they have all Sovereign Power, and therefore are irresistible and unaccountable to any but God; yet the Exercise of their Power is by their own consent directed and regulated by Laws, that they can neither make, nor abrogate Laws, but by the Consent of their Nobles and Commons assembled in *Parliament*; and therefore tho' they never can do any thing to forfeit their Power, yet they may do that, which is illegal; and how far the legal Exercise of such a Sovereign Power extends, must be known by the particular Laws and Constitutions of their several Kingdoms, not from the unlimited notions



notions of Sovereign Power, and Sovereign Will and Pleasure: And the Divines of the Church of *England* have generally look'd upon the Kingdom of *England*, as such a limited Monarchy; and if they have been mistaken in it, I hope it is a pardonable mistake, because it has been so general.

2. *That the Laws of England are the Kings Laws.*

This also is universally acknowledged, and the reason assigned for it by the Learned Doctor *Sanderson*; because, as the Lawyers teach, the Kings of *England* are the Fountain of Justice and Laws, and have alone that Sovereign Authority, that can give the Force and Vertue of Laws to the Laws themselves. For tho', as he observes, there is something necessary to prepare the matter for Laws, as the consent and advice of Parliament, yet it is the consent

*Sanderv. Praelectio septima de Legum humanarum causâ efficiente. Quin & in jure nostro, & in quotidianis processibus juridicis in foro contentioso ex solenni formulâ Regie Leges dici solent (the King's Laws.) non aliam ob causam, ut nos docuerunt juris nostri periti, quam quod Reges Angliæ sint fons justitiæ & Legum: & legibus ipsi ut pro legibus habeant vim omnem imponendi habent concessam sibi à Deo adiungantur, potestatem.*

of the King only, which gives them the Form and Obligation of Laws: So that they are the Kings Laws, because that it is his Authority that makes them Laws; but when they are made Laws by the King, they become the Laws of the Land, the Rule of his own Government, and his Subjects Obedience.

3. *That therefore it is an incident inseparable Prerogative in the Kings of England, as in all other Sovereign Princes, to dispence with penal Laws in particular cases, and upon particular necessary Reasons.*

It is also asserted by the Divines of the Church of *England*, That the King may pardon what Crimes he pleases, and in some cases, upon great and urgent necessities, may dispence with some Laws for a greater publick Good, or for the Relief of some particular Persons, where the Law appears too hard and rigorous, while the general Intention and Vigour of the Law is secur'd: For as they urge, the Imperfection of all humane Laws requires such an Authority as this to supply their defects.

But *the therefore* I do not so well understand, for I find none of them resolve this dispensing Power into the Laws, being the Kings Laws, which indeed will prove a Power of dispensing with all Laws where he pleases; for all Laws, as well as penal Laws, are the Kings Laws. Nor do I find any of them say, that this dispensing Power is equal in all Sovereign Princes. For they generally make some difference between absolute and limited Sovereigns; that is, the Exercise of whose Power is bounded by Laws of their own making: the first sort, who can make and abrogate Laws at their own pleasure, may certainly dispense with them also, when they see fit; whether those, who can neither make nor abrogate Laws, without the consent of their People, can dispence with what Laws they please, is a question, which I find nowhere debated among them, and therefore cannot give their opinion in it.

4. *That of these Reasons and these Necessities the King himself is Sole Judge.*

This I do not find any of our Divines meddle with, tho' I think the Case is very plain; every Man judges for himself, and will do so; and therefore a Sovereign Prince, who has no Superiour, will finally judge for himself, and no man can call him to an account for it, no more than they can resist him, tho' he shou'd judge amiss, and exercise an illegal Power: But this does not alter the case, nor make that legal, which in it self is illegal; he is concern'd to judge right, and exercise no Authority, but what he may, because there is a Superiour Judge even of Sovereign Princes; and then, which is consequent upon all.

5. *That this is not a trust, vested in, or granted to the King by the People, but is the ancient remains of the Sovereign Power, and Prerogatives of the Kings of England, which never yet was taken from them, nor can be.*

This also is universally own'd by the Divines of the Church of England, that the Kings of England, receive no power or Authority from the People; for all Sovereign Power comes  
from

from God, and the Crown of *England*, is not Elective but Hereditary: Nay, they own, that no Essential branch of Sovereign Power, can be taken away from a Sovereign Prince: the only question is, whether the exercise of Sovereign Power, can be regulated and limited by Laws of the Kings own making? and this those who talk of a limited Monarchy, must own: for there can be no limited Monarchy, if the exercise of Sovereign Power cannot be bounded by Laws. Thus I have shewn, as well as I can learn, what the Sense of the *Divines* of the Church of *England* is in these Points; how far they agree with the *Judges* reasons, if they be theirs, I cannot tell, because I know not in what Sense they understood them.

As for his application of all this, to the case of *Liberty of Conscience*, I have nothing at all to say to it: for since the King has declar'd his pleasure in it, I will not dispute against it: I am not without hope, that *Liberty of Conscience*, will not do the Church of *England* so much hurt, as her Adversaries wish, nor the Church of *Rome*, so much good as they expected: for tho' Fanaticism is a pleasing delusion, Popery is not popular in this age; and therefore it is not meer showing, that will make Converts; and I believe *Liberty of Conscience* it self, at this time, will not drive any Sober Dissenter the farther from Church.

And I have more hope of Gods Protection, because we are upbraided, as we are by this Writer, with our very hope and confidence in the Divine Providence; for who ever reads it, can think it nothing less, besides the knavery of the Quotation.

Doctor *Hicks*, in answer to that Objection against the Doctrine of Passive Obedience, *Where then is our security?* *Jovian p. 263.*  
*How can we be safe from the oppression of our Sovereign,*  
*if we may not be allow'd to resist?* Among other things tells his Readers, that *there neither is, nor can be any absolute security, either for the Sovereign against the Subjects, or for the Subjects against the Sovereign, in any Government: and there.* *Pag. 265.*



therefore in the second place, it may be a sufficient answer to the question, to shew, that we have all the security against the King, that the King hath against us; even all the security, that any people in the World ever had, have, or ought to have; and be instances in the Providence of God, in the Conscience, and Honour of the King, and in the Laws of the Realm, so which every man, be he never so great, is obnoxious, besides the Prince himself. This was all very much to the Doctor's purpose, it being all the Security we can have, that our Prince will not oppress us, which is not absolute security neither. But what does this signifie to Liberty of Conscience? how does this secure the Church of England if all her Enemies be let loose upon her?

But this Writer picking out two or three sayings from what the Doctor said of the Divine Providence, without any regard to the series of the Argument, concludes it with these words in Capital Letters. *So that they have all the security that any People in the world ever had, have, or ought to have.* As if the Doctor had taught, that no People in the World ever had, or ought to have, any other security against the Oppression of a Sovereign Prince, but only the Providence and Protection of God; whereas he applies this not only to the Providence of God, but *To the Conscience and Honour of the King, and the security of Laws*: The Providence of God indeed has the overruling determination of all things, but ordinary Providence works by means, and we have no reason to expect Miracles now; and therefore the Providence of God does not make other securities needless.

The Doctor tells us, *As the Princes best security against the People, is the watchful Providence of God; so the same watchful Providence is the Peoples best security against the Prince*: So that the Providence of God is an equal security to Prince and People against each other: But how would any Prince look upon such a trisler, who should tell him, Sir, all the security you have, or possibly can have against your Subjects, is only the Providence and Protection of God, and therefore

therefore you may save Money, and disband your Guards and Armies. To perswade Men to part with all other securities, and to venture upon the most destructive Methods, in confidence of the divine Protection, is like the Devils Temptation to Christ, to cast himself down from the Pinnacle of the Temple ; for it is written, *he shall give his Angels charge concerning thee, and in their hands they shall bear thee up, lest at any time thou dash thy foot against a stone*, 4. Mat. 6. I believe both Prince and People desire all the security they can, and do not think it reasonable to part with one good security, because they have another. We have the Kings Word, his Conscience, his Honour, and his Laws, and thank God for all, and implore the Protection of his Providence, without which all other Securities are nothing ; and next to the Providence of God, Laws are the best security, because they are the Foundation of Conscience and Honour too, and of all promises to govern by Laws ; for Conscience respects Laws, and where there is no Law in the the case, Conscience is not concern'd and can hinder nothing ; and to be sure the Honour of a Prince, as well as Conscience, is less concern'd, when it is under no restraint of Laws.

He concludes this Pamphlet with some few Authorities for Liberty of Conscience ; I shall not now examine how pertinent they are, for I will give no other Answer but this ; when he has answered all the Presbyterian Arguments against Toleration, but especially that Book call'd *Toleration discuss'd*, and the Arguments of Doctor *Parker*, now the Right Reverend Bishop of *Oxford* in his Ecclesiastical Policy : When he can prove, that Liberty of Conscience is the Doctrine and Practice of the Church of *Rome*, and the standing Rule of the Inquisition, then I will consider further on this Argument. In the mean time, Sir I am,

*Your most Obedient Servant.*

F I N I S.

## Books lately printed for Richard Chiswell.

A Discourse concerning the Necessity of Reformation, with respect to the Errors and Corruptions of the *Church of Rome*. Quarto. First and Second Parts.

A Discourse concerning the Celebration of Divine Service in an Unknown Tongue. Quarto.

A Papist not Misrepresented by Protestants. Quarto.

An Exposition of the Doctrine of the *Church of England*, in the several Articles proposed by the late BISHOP of CONDOM, [in his Exposition of the Doctrine of the *Catholick Church*.] Quarto.

A Defence of the Exposition of the Doctrine of the *CHURCH of ENGLAND*, against the EXCEPTIONS of Monsieur de MEAUX, late Bishop of Condom, and his VINDICATOR. Quarto.

An Answer to THREE PAPERS lately printed, concerning the Authority of the *Catholick Church* in Matters of Faith, and the Reformation of the *Church of England*. Quarto.

A Vindication of the Answer to SOME LATE PAPERS concerning the Unity and Authority of the *Catholick Church*, and Reformation of the *Church of England*. Quarto.

An Historical Treatise written by an AUTHOR of the Communion of the *CHURCH of ROME*, touching TRANSUBSTANTIATION. Wherein is made appear, That according to the Principles of THAT CHURCH, This Doctrine cannot be an Article of Faith. Quarto.

A CATECHISM explaining the Doctrine and Practices of the *Church of Rome*; with an Answer thereunto. By a Protestant of the *Church of England*. 8vo.

The Lay-Christians's Obligation to read the Holy Scriptures. Quarto.

The Plain Man's Reply to the *Catholick Missionaries*. 24<sup>o</sup>.

The Protestant's Companion: Or an Impartial Survey, and Comparison of the Protestant Religion as by Law established, with the main Doctrines of Popery. Wherein is shewn, that Popery is contrary to Scripture. Primitive Fathers and Councils; and that proved from Holy Writ, the Writings of the Ancient Fathers, for several hundred Years, and the Confession of the most Learned Papists themselves. Quarto.

A Discourse of the Holy Eucharist, in the two great points of the Real Presence and the Adoration of the Host. In Answer to the Two Discourses lately printed at Oxford on this Subject. To which is prefixed a large Historical Preface relating to the same Argument. Quarto.

The Pillar and Ground of Truth. A Treatise shewing that the *Roman Church* falsely claims to be That Church, and the Pillar of That Truth, mentioned by S. Paul in his First Epistle to Timothy, Chap. III. Vers. 15. Quarto.

A Brief Discourse concerning the Notes of the Church, with some reflections on Cardinal Bellarmine's Fifteen Notes. Quarto. whereof Ten are extant. The rest will be Published in their order.

A Defence of the Confuter of Bellarmine's Second Note of the Church [Antiquity] against the Cavills of the Answerer. Quarto.

The Peoples Right to read the Holy Scriptures asserted. In Answer to the 6th, 7th, 8th, 9th and 10th Chapters of the [Popish Representer, Second Part].

Two Discourses: Of Purgatory and Prayers for the Dead. Quarto.

A Short Summary of the Principal Controversies between the *Church of England*, and the *Church of Rome*. Being a Vindication of several Protestant Doctrines, in Answer to a late Pamphlet intitled [Protestancy destitute of Scripture-Proofs].



